

Non-Confidential

KCOM's response to Ofcom's consultation for the Wholesale Fixed Telecoms Market Review 2021-26 for the UK (excluding the Hull Area)

1. Introduction

- 1.1 KCOM Group Limited ('KCOM') welcomes the opportunity to respond to Ofcom's further consultation on the Wholesale Fixed Telecoms Market Review ('WFTMR') for the UK (excluding the Hull Area) 2021-26 (the 'November Consultation')¹. The WFTMR, including both the January Consultation² and the November Consultation, is of direct relevance to KCOM given its deployment plans.
- 1.2 As KCOM has previously noted, we consider that the WFTMR will play a key role in shaping the competitive landscape for the future by ensuring that rival networks can compete effectively against BT in the provision of very high-speed wholesale services, and by extension to offer alternative downstream retail solutions. It is therefore essential that the review provides a level playing field for the industry so that consumers and business can fully benefit from the growth and innovation drivers obtained from full fibre deployments, and Multi-Service Networks (MSNs) more generally.
- 1.3 KCOM currently provides fibre broadband services to a range of businesses and consumers outside the Hull Area and is in a period of network expansion, as set out in our response to the January Consultation. As a full fibre provider KCOM is committed to providing material support to the Government's target of delivering "gigabit-capable broadband" nationwide by 2025, and we are reviewing our deployment plans accordingly. However, to turn our ambitions for further material deployment in Area 3 locations into a reality, we need a level playing field with Openreach.
- 1.4 As KCOM has previously noted, it is not necessarily the case that Openreach has to be the sole full-fibre provider in Area 3 locations and therefore the regulatory inducements being proposed for Openreach are unlikely to be needed to ensure deployment(s) in all Area 3 locations. Indeed, KCOM's current committed deployment plans are all in Area 3 locations.
- 1.5 Considering both the current level of material investments that KCOM is making, and the need to achieve the Government's ambitious targets, it is important that the regulation Ofcom proposes facilitates complementary network roll-outs by committed Communications Providers (CPs) in addition to Openreach, rather than acting to chill these investments.
- 1.6 KCOM welcomes a number of Ofcom's proposals for the UK (excluding the Hull Area), as well as the clarifications detailed in the November Consultation. Set out

¹ Ofcom (2020), *Wholesale Fixed Telecoms Market Review 2021-26, Further consultation on certain proposed remedies*, 6 November 2020, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0023/206960/wftmr-further-consultation-proposed-remedies.pdf

² Ofcom (2020), *Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26*, 8 January 2020, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0037/188956/wftmr-volume-1-overview.pdf

below are the key points that KCOM wishes to make, which we hope Ofcom finds helpful:

- **DFA (including ancillary services charges) presents the potential to support KCOM's MSN deployment plans as well as those of 5G providers [X]. However, we consider it important that Ofcom obtains the right balance in its approach to DFA pricing in the UK (excluding the Hull Area).** As a matter of principle, BT must recover its legitimately incurred costs for the supply of DFA (and inter-exchange dark fibre (Dark Fibre X (DFX))). The pricing should not be set at an artificially low level (i.e. maximum prices) to promote unsustainable alternative network deployments nor should it undermine the commercial dark fibre access market. While setting a cost-based charge control that sets DFA / DFX pricing using Openreach's national (CCA FAC) cost base (using the 2019/20 RFS) most likely achieves that balance. KCOM is keen that Ofcom continues to review the input costs of Openreach's network and appropriate migration charges (active services to DFA) in order to ensure it arrives at the correct pricing.³
- **It is important to ensure the proposed DFA remedy can be effectively consumed by industry and for that reason Openreach should be given a reasonable and realistic time period to implement DFA.** Openreach is well placed to make representations on this matter, which Ofcom is in a position to test. KCOM recognises the challenges of introducing a new reference offer and the specific issues Openreach describes in terms of training and system development. KCOM considers the two revised dates proposed by Ofcom to be reasonable: a soft launch for DFA by 17 August 2021 and a full DFA launch by 1 June 2022.
- **Physical Infrastructure Access (PIA) pricing and ancillary charges regime (basis of charges).** KCOM is in agreement with Ofcom's assessment of Openreach's network that:
 - Spine ducts with two bores, and spine ducts with three or more bores are ultimately used to serve a greater number of premises than single bore spine ducts. Furthermore, in general, the greater the number of bores, the greater the number of premises served by that duct. As such, for the purposes of setting a charge control, it is reasonable to assume that competing CPs deploying one (25mm) sub-duct will not compete for all end customers served by multi-bore spine duct, and/or that there is greater potential for multiple competing telecoms providers to be sharing these ducts. Therefore, competing CPs should pay a smaller share of the unit cost of these multi-bore spine ducts than they do for single bore spine ducts.

³ As KCOM notes in its supplementary response to the WFTMR (Hull Area), KCOM does not consider the imposition of DFA to be appropriate or proportionate in the Hull Area. However, in the event that Ofcom reaches a contrary view, KCOM does not consider Openreach DFA pricing to be an appropriate benchmark for assessing fair and reasonable pricing in the Hull Area.

- With joint boxes and manholes, competing CPs and Openreach can simultaneously use manholes and joint boxes to provide services to consumers. Furthermore, it is reasonable to assume that competing CPs installing one sub-duct would not compete for all end customers served by these chambers, and/or that there is greater potential for multiple competing telecoms providers to be sharing these chambers.

For the period of the current market review, KCOM supports the proposed change in methodology whereby Ofcom uses a simple proportion calculation as the basis for assessing the contributions that PIA customers should make for multi-bore duct and chamber products. It is not clear that using spot pricing based on duct utilisation would necessarily deliver a better competition outcome with the former approach running the risk of future PIA price instability. However, KCOM considers it important that Ofcom looks at this again carefully at its next market review and reserves its position to intervene in the event that this approach proves problematic.

In terms of the basis of charges pricing obligation that Ofcom proposes to apply to PIA ancillaries related to network adjustments and other PIA ancillaries and contractor Excess Construction Charges (ECCs), KCOM supports Ofcom's proposed pricing interpretation and the proposed requirement for BT to provide Ofcom with cost information on these services as part of its regulatory reporting requirements. KCOM considers a charge control disproportionate but also considers a first order test (Distributed Long Run Incremental Cost (DLRIC) and Distributed Standalone Cost (DSAC)) to be inappropriate for the reasons given by Ofcom. Ofcom would better use the first order test of FAC for PIA ancillaries rather than DSAC. This would, on a first order test, ensure prices for PIA ancillaries are not excessive while allowing BT to recover its efficiently incurred costs.

- **Single Order GEA-FTTC (SOGEA) pricing:** KCOM recognises the important wholesale role played by VULA in driving competition in the provision of next generation fibre broadband services using Openreach's access network. KCOM considers that charge controlling FTTC 40/10 services provided using SOGEA thereby treating them on the same basis as the other VULA services that are provided as overlay to the existing copper service (WLR and MPF) has merit. This will have the effect of applying a maximum charge for the SOGEA 40/10 service as the maximum MPF charge plus the maximum VULA 40/10 charge. On the one hand this will provide the certainty and clarity about the maximum charge that customers relying on SOGEA deliveries in specific locations both in Wholesale Local Access (WLA) Area 2 and WLA Area 3. However, Ofcom should also be mindful of the need to provide flexibility in those locations in order to reflect costs and to support end-to-end competition.

1.7 KCOM has restricted its comments in its response to the November Consultation to the WFTMR as it applies to the UK (excluding the Hull Area). KCOM considered it helpful to also make a separate supplementary response to the WFTMR (Hull



Area) given the benchmarking approach that Ofcom is proposing to take in relation to DFA.